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5
6 THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9 IN THE MATTER OF THE EXTRADITION
10 OF DAWID TOMASZ WOZNIAK TO THE
REPUBLIC OF POLAND

Case No.: 2:22-mj-00028-KJN-1

11 NOTICE OF MOTION AND MOTION FOR
12 RECONSIDERATION OF BAIL

13 HEARING DATE: APRIL 20, 2022 AT 9:00
A.M.

14 Defendant DAWID TOMASZ WOZNIAK, by and through his counsel of record, Joseph
15 Abrams and Ryan T. Okabe, hereby moves this honorable Court to reconsider the Court's prior
16 order of detention and grant Mr. Wozniak release on bail pending further extradition proceedings.
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18 Dated: April 7, 2022

/s/ Joseph Abrams
Joseph Abrams
Attorney for Defendant

INTRODUCTION

A. Background

On February 17, 2022, the government filed its *Memorandum of Extradition Law and Request for Detention Pending Extradition Proceedings*. Prior counsel failed to file a response to the government's memorandum.

On February 22, 2022, citing only the government’s unopposed memorandum, the Honorable Carolyn K. Delaney, United States Magistrate Judge, issued the Court’s *Order of Detention Pending Trial* and ordered the defendant, Dawid Tomasz Wozniak, detained pending further extraditions proceedings.¹

Mr. Wozniak's newly retained counsel now moves this honorable Court to reconsider the Court's prior order of detention and grant Mr. Wozniak release on bail pending further extradition proceedings for the reasons set forth in this motion.

B. New Information

This motion is based solely on new facts and circumstances that were not shown or presented to the Court when it previously considered the government's request for detention. Specifically, the new facts and circumstances, as set forth in more detail below, include information pertaining to the following:

- Mr. Wozniak's immigration history, education and employment history, family circumstances, and close community ties
 - Mr. Wozniak's crime-free life in the United States, outstanding scholastic and professional accomplishments, and good deeds and works

¹ Pretrial Services confirmed with counsel that they did not interview Mr. Wozniak or prepare a bail report in this case.

- Mr. Wozniak's dramatically-changed life circumstances and extraordinary family circumstances, the nature of Mr. Wozniak's profession and employment, the procedural history and posture of the case, and mitigation measures available to the Court

STANDARD OF REVIEW

Federal statutes governing extradition (U.S.C. §§ 3181, *et seq.*) do not explicitly provide for bail, and the Bail Reform Act (U.S.C. §§ 3141, *et seq.*) is also not directly applicable because an extradition proceeding is not a criminal case.

The extradition process, including the granting of bail, is determined *sui generis*. Case law supports granting bail in extradition proceedings in compelling cases where fair justice requires it.² More specifically, detainees awaiting extradition proceedings may be released on bail if they demonstrate that they are neither a flight risk nor a danger to the community and special circumstances exists in their case.³

ARGUMENT

I. MR. WOZNIAK SHOULD BE RELEASED ON BAIL

A. Mr. Wozniak Is Not A Flight Risk

The government asserts that Mr. Wozniak is a flight risk because he deliberately fled Poland to the United States to avoid prosecution. This assertion is provably false.

1. Mr. Wozniak's immigration history, education and employment history, family circumstances, and close community ties

Mr. Wozniak was a 16-year-old minor at the time of the alleged offense on December 24, 2007. Following the alleged offense, Mr. Wozniak was detained and questioned by law enforcement authorities. After fully cooperating with law enforcement, Mr. Wozniak was released without

² *United States v. Leitner*, 784 F.2d 159, 160 (2d Cir. 1986).

³ *Id.* at 160, 161.

1 restriction and without being charged. Further, nearly a year before the alleged offense, Mr. Woz-
2 niak's father began planning Mr. Wozniak's immigration to the United States so that he could
3 begin high school in California in January 2008.
4

5 Mr. Wozniak's application for an immigrant visa was submitted on March 5, 2007, nine
6 months *prior* to the alleged offense. Mr. Wozniak legally immigrated to the United States with his
7 brother, Sebastian, in January 2008. So, while Mr. Wozniak may have left Poland shortly after the
8 date of the alleged offense, his departure was long-planned and had nothing whatsoever to do with
9 avoiding prosecution.
10

11 Once in California, Mr. Wozniak immediately enrolled at Thomas Downey High School
12 in Modesto, California. In the years that followed, Mr. Wozniak graduated from high school and
13 college, obtained employment as an aviation mechanic, became a U.S. Citizen, and started a family.
14 (See Exhibits A and B.)
15

16 In the 14 years that Mr. Wozniak has resided in the United States, he has forged extremely
17 close family and community ties. His wife and 2-year-old son are here. His father and siblings are
18 here. His career is here. His citizenship is here.
19

20 It's unimaginable to think that Mr. Wozniak would flee after working so hard, for so long,
21 to obtain so much. Or that he would willingly return to a country seeking his extradition - a country
22 where he has few remaining ties and which is located near a war zone and the center of a refugee
23 crises.
24

25 In sum, Mr. Wozniak's immigration history, education and employment history, family
26 circumstances, and close community ties firmly establish that he is not a flight risk if he is re-
27 leased on bail.
28

1 **B. Mr. Wozniak Is Not A Danger To The Community**

2 The government asserts that the alleged offense proves that Mr. Wozniak is a danger to the
3 community. Similar to the government's assertion that Mr. Wozniak is a flight risk, the govern-
4 ment relies solely on alleged and unproven conduct that occurred more than 14 years ago when
5 Mr. Wozniak was a minor.

6

7 **1. Mr. Wozniak's crime-free life in the United States, outstanding scholastic
8 and professional accomplishments, and good deeds and works**

9 Mr. Wozniak today is a 30-year-old married man with a thriving family and career. In more
10 than 14 years of residing in the United States, Mr. Wozniak has lived a completely law-abiding
11 life. What's more, he's worked hard to educate himself, build a career, start a family, and become
12 a respected member of his community.

13 Mr. Wozniak's close friends and colleagues describe him as polite, respectable, levelheaded,
14 mature, and integral to his community. (See Exhibit C.)

15 One of Mr. Wozniak's supervisors states, "*I feel that he has proven himself...to be a devoted
16 husband, a proud father...and gracious citizen in the life he has made here...and has never por-
17 trayed himself in a negative or aggressive way in my presence.*"

18 Another friend and colleague states, "*This is a person who puts his family and friends before
19 himself and is one of the most unselfish people I have ever met...I have so much respect for all that
20 Dawid has done with his life since he came to the U.S.*"

21 Another friend states, "*He always strived to be a good person...trying to mold his son to grow
22 up and be an upstanding and loving person.*"

23 The unproven allegations against Mr. Wozniak as a 16-year-old youth in Poland should have
24 little or no bearing on the determination if he presents a danger to the community today. To the
25 contrary, Mr. Wozniak's crime-free life in the United States, outstanding scholastic and

1 professional accomplishments, and good deeds and works establishes that he is not a danger to the
2 community if he is released on bail.

3 **C. Special Circumstances In Mr. Wozniak's Case Support His Release On Bail**

4 There are number of special circumstances in Mr. Wozniak's case that present compelling
5 factors and support his release on bail.

6 **1. Mr. Wozniak's dramatically-changed life circumstances**

7 Mr. Wozniak's dramatically-changed life circumstances presents a compelling factor and
8 supports his release on bail.

9 At the time of the alleged offense, Mr. Wozniak was a 16-year-old youth in Poland hanging
10 out with friends. Today, he is 30 years old. He is married with a young son. He is educated and
11 has a thriving career. He is an integral part of his community. The differences between Mr. Woz-
12 niak at the time of the alleged offense and Mr. Wozniak today are simply incomparable, and thus
13 constitutes a special circumstance in his case.

14 **2. Mr. Wozniak's extraordinary family circumstances**

15 Mr. Wozniak's extraordinary family circumstances presents another compelling factor and
16 further supports his release on bail.

17 Mr. Wozniak is the sole source of support for his family. Because his young son has med-
18 ical needs, Mr. Wozniak and his wife, Monika, decided that she would stay home and take care of
19 their son until he gets older. Mr. Wozniak's son, Kacper, suffers from severe food allergies, ec-
20 zema, and atopic dermatitis.

21 Monica describes how Kacper is constantly looking for his father and crying for him. She
22 says that he wakes up crying at night and cries out for his dad all the time. Monika is also worried
23 that the family will run out of money soon because her husband has been unable to work. She fears
24

1 being unable to pay the bills and losing everything they have worked so hard for. Monika is
2 devastated that her son has only one parent now, a scared mother. (See Exhibit D.)
3

4 In short, Mr. Wozniak's family's reliance on him extends beyond financial support and is
5 all-encompassing, and thus constitutes another special circumstance in his case.
6

3. The nature of Mr. Wozniak's profession and employment

7 The nature of Mr. Wozniak's profession and employment presents another compelling fac-
8 tor and further supports his release on bail.
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10 Mr. Wozniak is employed as an aviation mechanic for Cal Fire Department of Forestry and
11 Fire Protection (Cal Fire). (See Exhibit E.)
12

13 Mr. Wozniak and his colleagues at Cal Fire are dedicated and indispensable servants in the
14 fire protection of California and the emergency services that they provide.
15

16 California is the most fire-prone state in the country and requires the most resources for
17 Cal Fire to fulfill its mission. Those responsible for maintaining Cal Fire's flight operations, like
18 Mr. Wozniak, are particularly critical to safeguarding and protecting the people, property, and
19 resources of California, and thus constitutes another special circumstance in Mr. Wozniak's case.

4. Mr. Wozniak's need to consult with counsel and participate in the case

20 Mr. Wozniak's need to closely consult with counsel and participate in the preparation of
21 his case presents another compelling factor and further supports his release on bail.
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23 There are a number of legal and evidentiary concerns in this case that require close scrutiny.
24 First, the alleged offense occurred more than 14 years ago when Mr. Wozniak was a minor in his
25 native country of Poland. Further, the alleged offense involved several other participants and wit-
26 nesses who have provided inconsistent statements. Also, the police work in the case appears
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1 unprofessional and biased against Mr. Wozniak. Finally, a convicted codefendant appears to have
2 received a favorable plea deal to implicate Mr. Wozniak in his absence.

3 The above concerns suggest possible corruption and raises valid question as to whether Mr.
4 Wozniak's due process rights will be protected if he is extradited to Poland. As such, it is critical
5 that Mr. Wozniak be able to closely consult with counsel and participate in the preparation of his
6 case, and thus constitutes another special circumstance in Mr. Wozniak's case.

7 **5. Mitigation measures available to the Court**

8 Mitigation measures available to the Court presents another compelling factor and further
9 supports Mr. Wozniak's release on bail.

10 Mitigation measures available to the Court include Pretrial Services supervision of Mr.
11 Wozniak and restrictive conditions limiting his ability to travel outside the Eastern District of Cal-
12 ifornia. There are also electronic monitoring and curfew programs that may be imposed to further
13 ensure that Mr. Wozniak engages only in essential activities relating to work, school, medical, and
14 family matters.

15 The availability of mitigation measures that further ensure Mr. Wozniak's appearance and
16 protect the public constitutes another special circumstance in Mr. Wozniak's case.

17 **CONCLUSION**

18 As detailed and established in this motion, Mr. Wozniak is neither a flight risk nor a danger
19 to the community if he is released on bail. Additionally, there are a number of special circum-
20 stances that present compelling factors and further support Mr. Wozniak's release on bail.

1 As such, for the reasons set forth in this motion, Mr. Wozniak moves this honorable Court
2 to reconsider the Court's prior order of detention and grant Mr. Wozniak release on bail pending
3 further extradition proceedings.
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5 Dated: April 7, 2022

Respectfully submitted,
6 /s/ Joseph Abrams
Joseph Abrams
7 Attorney for Defendant
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CERTIFICATE OF SERVICE

I, JOSEPH ABRAMS, declare:

That I am a citizen of the United States and resident of or employed in Orange County, California; that my business address is Law Office of Joseph Abrams, 2800 E. Katella Avenue, Suite 800, Anaheim, California 92806; that I am over the age of eighteen years; and I am not a party to the above-entitled action.

That I am an attorney and member of the bar of the State of California and of the United States District Court for the Eastern District of California, and that on this date, I served a true and correct copy of the attached **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF BAIL** by electronically filing same with the Clerk of the District Court using its CM/ECF system, which electronically notifies counsel for that party as follows:

**Audrey B. Hemesath
Assistant United States Attorney**

This Certificate is executed on this date at Anaheim, California. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 7, 2022

/s/ Joseph Abrams

Joseph Abrams

Attorney for Defendant